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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1968

No. 569

HOWARD CURRY,

Petitioner,

vs.

THE FLORIDA BAR,

Respondent.

Petition for a Writ of Certiorari to the Supreme Court of Florida

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Petitioner Howard Curry prays for a Writ of Certiorari to review the judgment of the Supreme Court of Florida entered in the above case on 28 June 1968.

Opinions Below

The opinion of the Supreme Court of Florida is reported at 211 So.2d 169, (A).

Jurisdiction

The judgment of suspension of the Supreme Court of Florida was filed 15 May 1968. (A. 1). Petition for

Rehearing was denied on 28 June 1968. On 31 July 1968 the Honorable Hugo Black, Justice of the Supreme Court of the United States granted Petitioner's "Application for Stay of Judgment of Suspension of the Supreme Court of Florida."

The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3).

Questions Presented

1. Whether a state in a disciplinary procedure—disbarment or suspension—can use the threat of contempt of Court to secure incriminatory evidence against an accused lawyer contrary to Constitutional guarantees against self-incrimination as contained in the Fifth and Fourteenth Amendments to the United States Constitution?

2. Has a lawyer been denied equal protection of law where he is suspended from practice upon the recommendation of the Board of Governors of the Integrated Florida Bar where the membership of said Board is geographically determined, but grossly violates the "one man-one vote" rule?

3. Has a lawyer been denied due process of law where the record fails to reveal whether the governing body of the Florida Bar complied with the procedure required by the Integration Rule concerning disciplinary procedures, and the suspended lawyer was denied the right to have the question of his suspension orally argued by the counsel of his choice before the Supreme Court of Florida by virtue of an Act of God?

Integration Rule of The Florida Bar, Statutes and Constitutional Provisions Involved:

INTEGRATION RULE OF THE FLORIDA BAR

Article III

BOARD OF GOVERNORS

"1. The Board of Governors shall be the governing body of The Florida Bar. The Board shall consist of the President of The Florida Bar, the President-elect, the President of the Young Lawyers Section, the President-elect of the Young Lawyers Section who shall not be entitled to vote except in the absence of the President of the Young Lawyers Section, and representatives elected from the active members of The Florida Bar in each judicial circuit. The total number of representatives elected from judicial circuits shall be twice the number of the total of all the judicial circuits as constituted at the time of the election. The circuit representatives shall be apportioned among, elected from and hold office for the terms as in this Article provided.

(a) One-half of the circuit representatives shall be apportioned among and elected from the judicial circuits on the basis of one representative from each circuit.

(b) One-half of the circuit representatives shall be apportioned among and elected from the judicial circuits on the basis of the number of active members of The Florida Bar residing in each circuit. The formula and mechanics of this and for determining the number of representatives in this manner apportioned to and elected

from each judicial circuit shall be: first, determine the average number of active members of The Florida Bar residing in each judicial circuit by dividing the total of the number of judicial circuits into the number of active members of The Florida Bar residing in Florida, and then divide the resulting average into the number of active members of The Florida Bar residing in each judicial circuit. Apportionment among and election of representatives shall be in accordance with the results thus obtained and by apportioning to each judicial circuit of one representative for each multiple of one of the results obtained and one for each fraction thereof in accordance to size in descending order from the largest fraction to the next largest fraction and so on until all representatives are apportioned to judicial circuits.

(c) * * *

(d) * * *

(e) * * *

2. The members of the Board of Governors from each judicial circuit shall be nominated and elected by the active members of The Florida Bar residing in such judicial circuit. Each elected member shall hold office for two years and until his successor is elected and qualified. Elections in odd numbered circuits shall be held in odd numbered years, and elections in even numbered circuits shall be held in even numbered years. The By-Laws shall provide for all nominations and elections of members of the Board of Governors. Newly elected members shall take office at the conclusion of the annual meeting of The Florida Bar following election to office. Any

vacancy on the Board of Governors arising in the office of representative from a judicial circuit shall be filled by vote of the remaining members of the Board for the unexpired term, from the active membership of such circuit."

Article XI

RULES OF DISCIPLINE

Rule 11.04: Investigation By Grievance Committee

(1) * * *

(2) *The accused.* The accused may be required to testify and to produce evidence as any other witness, and when so required he may be accompanied by counsel. The accused has no right to be present or to be heard during an investigation, but before any finding of probable cause is recommended the accused shall be advised in general terms the nature of the conduct which is being investigated, and he shall be given an opportunity to make a statement, personally or by counsel, verbally or in writing, sworn or unsworn, explaining, refuting or admitting the alleged misconduct. The accused shall have no right to present other testimony or evidence, and he shall have no right of confrontation or cross-examination.

(3) *Testimony of witnesses; contempt.* The accused attorney or any other person who is subpoenaed to appear and give testimony or to produce books, papers or documents, and who refuses to appear or produce such books, papers or documents before the grievance committee or who, having been duly sworn to testify, refuses to answer any proper question, may be cited for contempt of this

Court. Any contempt proceedings instituted or prosecuted during the progress of an investigation or trial covered by the confidential rule shall be conducted in a manner consistent with such rule and shall not be made public except under conditions prescribed in such rule.

(4) * * *

(5) * * *

(6) * * *

Rule 11.06: Trial by Referee and Entry of Judgment

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(7) *The respondent.* The respondent may be called as a witness by The Florida Bar to make specific and complete disclosure of all matters material to the issues. When the respondent attorney is subpoenaed to appear and give testimony or to produce books, papers or documents, and he refuses to appear or to produce such books, papers or documents, or, having been duly sworn to testify, he refuses to answer any proper question, he may be cited for contempt of this Court.

(8) *Complaining witness.* The complaining witness shall have no rights other than those of any other witness; he has no right to be present during a hearing or trial but he may be called upon to testify and produce evidence as any other witness. Neither unwillingness nor neglect of the complaining witness to cooperate, nor settlement, compromise or restitution will excuse failure to complete any trial.

(9) *Findings and judgment.*

(a) *Record and report of referee.* Within thirty (30) days after the conclusion of a trial before a referee, or as soon thereafter as practical, he shall make a report and enter it as part of the record. The referee's report shall include (1) a finding of fact as to each item of misconduct of which the respondent is charged, (2) recommendations as to whether or not the respondent should be found guilty of misconduct justifying disciplinary measures, (3) recommendations as to the disciplinary measures to be applied, (4) a statement of the costs of the proceedings and recommendations as to the manner in which costs should be taxed. The costs shall include court reporters' fees, witness fees and traveling expenses, and reasonable traveling and out of pocket expenses of the referee and bar counsel, if any. Within five (5) days after the entry of findings of the referee, the record of the proceeding shall be filed with the Executive Director. Within five (5) days after such filing, a notice thereof together with a copy of the report of the referee shall be served upon bar counsel and upon the respondent by the Executive Director.

(b) *Statement of parties.* Bar counsel and respondent may each file a statement in support of or in opposition to the findings and recommendations of the referee. Such statement, if filed, shall be filed with the Executive Director within ten (10) days after service of a copy of the report of the referee or within five (5) days after receipt of such statement from an opposing party, and shall become a part of the record.

(c) *Review and entry of judgment.*

(i) *Review.* The entire record, which shall consist of the complaint and all other pleadings, transcript of testimony, exhibits, report of the referee and statement of the respondent in opposition thereto, if any, shall be referred to and read by a reviewing committee consisting of five members of the Board of Governors designated by the President. Such committee shall prepare a written report indicating the concurring and dissenting members of the committee as to the guilt of the respondent and as to its recommendations for disciplinary measures, if any. The report of the reviewing committee shall be considered by the Board; provided, however, that in the event less than four members of the committee concur as to the guilt of the respondent, or in the event the Board shall fail to approve the report of the committee as to the guilt of the respondent, then a quorum of the Board shall review the entire record in such manner as to insure protection of the rights of the accused.

(ii) *Judgment.* The Board of Governors shall enter an appropriate judgment in accordance with its findings which shall be signed by the President and a

copy of which shall be furnished to the respondent. If the respondent is found not guilty, the judgment shall dismiss the complaint. If the respondent is found guilty, the judgment shall set forth the disciplinary measures to be enforced. The costs shall be taxed in the discretion of the Board of Governors.

(iii) *Filing.* If the respondent is found guilty and the judgment includes public reprimand, suspension from practice or disbarment, the Executive Director shall file the entire record with the Clerk of the Supreme Court.

Florida Statute

877.02 Solicitation of legal services or retainers therefor; penalty.—

(1) It shall be unlawful for any person or his agent, employee or any person acting on his behalf, to solicit or procure through solicitation either directly or indirectly legal business, or to solicit or procure through solicitation a retainer, written or oral, or any agreement authorizing an attorney to perform or render legal service, or to make it a business to solicit or procure such business, retainers or agreements; provided, however, that nothing herein shall prohibit or be applicable to banks, trust companies, lawyer reference services, legal aid associations, lay collection agencies, railroad companies, insurance companies and agencies, and real estate companies and agencies, in the conduct of their lawful businesses, and in connection therewith and incidental thereto forwarding legal matters to attorneys at law when such forwarding is authorized by the customers or clients of said business and is done

pursuant to the canons of legal ethics as pronounced by the supreme court of Florida.

(3) Any person violating any provision of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than $500 or by imprisonment in the county jail not to exceed 6 months, or by both such fine and imprisonment.

(4) This section shall be taken to be cumulative and shall not be construed to amend or repeal any other valid law, code, ordinance, rule, or penalty now in effect.

Amendments V and XIV to the Constitution of the United States.

STATEMENT

This case involves disbarment proceedings brought against petitioner by the Florida Bar. On 7 February 1966, a preliminary hearing was held before the Florida Bar Grievance Committee "B" for the Eleventh Judicial Circuit, Dade County, Florida, a transcript of which was introduced into evidence at the subsequent trial before the Referee (R. 41-42).

Pursuant to Integration Rule 11.04 (2) petitioner was required to testify before the Grievance Committee and give evidence against himself although he was not represented by counsel nor was he faced with an accuser.

The Grievance Committee found probable cause to believe that petitioner had violated Canon 27 of the Professional Ethics by solicitation of professional employ-

ment, and on 14 March 1966 the Florida Bar filed a complaint against petitioner (R. 90-93). Florida Statute 877.02 makes solicitation of professional employment a crime, *supra* p. 9.

On 24 March 1966, petitioner, through his attorney, filed a Motion to Dismiss, alleging (R. 96-97):

> 1) That the Board of Governors is illegally and unlawfully constituted in that it is not constituted in accordance with Article III Board of Governors, Integration Rule of the Florida Bar, and that therefore, an action commenced in its behalf by the present Board of Governors is void for lack of jurisdiction over the persons or the subject matter.
>
> 2) That assuming arguendo that (i) The Florida Bar had jurisdiction over the respondent and (ii) that the respondent was guilty of some professional impropriety, a fact which is vehemently denied, by requiring the respondent to testify before the Grievance Committee of the Eleventh Judicial Circuit, the respondent has obtained immunity from any type of penalty of forfeiture, including the revocation of his license to practice law. See Sec. 932.29, F.S.A. *and State Beverage Department of Florida v. State of Florida, ex rel. Zucker* (Fla.App. 3rd 1960) 116 So.2d 640.
>
> 3) That the persons who presided over the preliminary hearing herein lack jurisdiction over the persons and the subject matter in that said

persons who presided over said preliminary hearing were not selected in accordance with the provisions of the Integration Rule of the Florida Bar.

4) That the canons and rules which respondent has allegedly violated under Count I are so vague, uncertain and indefinite that they furnish no guide to a practicing attorney upon which he can predicate his professional conduct, and said canons and rules are therefore unconstitutional under the due process clauses of the United States and Florida Constitutions.

On said Motion before the Referee on 14 September 1966 (R. 7,37) petitioner's counsel argued that because petitioner was required to testify against himself or subject himself to contempt of Court by virtue of Integration Rule 11.04(3) that he was immunized from further prosecution as to those matters about which he had been compelled to testify at the preliminary hearing. (R. 35)

" * * * I take the position that when you call him down there and the law requires him to testify just for example if you call a man before the Sheriff's Department right now, you don't testify you lose your job. In other words, you can't be employed by Dade County and invoke the Fifth Amendment. I say when you make him do that, that guy has gained immunity in different ways, that is by statute. There is no other way of getting immunity.

Petitioner repeatedly argued that all matters set forth in his Motion to Dismiss were not waived, thereby preserving the Constitutional rights raised in his Motion to Dismiss (R. 8, 10, 11, 12, 13, 14, 17, 18, 24, 25, 32, 34 and 35). The referee reserved ruling thereon (R. 36).

Thereafter petitioner and the Florida Bar entered into a stipulation (R. 101-103) agreeing, *inter alia*:

> 8. That Respondent's Motion to Dismiss, dated August 24, 1966, filed herein, raises certain issues going to the matter of jurisdiction over the Respondent and to the authority of the Board of Governors, the Referee and the Counsel for The Florida Bar to bring the present action against the Respondent. If these issues are, indeed, jurisdictional matters, or if there are constitutional issues relating to the Canons of Professional Ethics, as raised by Respondent's Motion to Dismiss, this Stipulation is not to be considered as speaking to such jurisdictional issues and constitutional issues, *and the Respondent is understood to have preserved such issues and matters for such further or other actions or proceedings as he may be advised.*

On 7 December 1966 the cause came on for hearing before the Referee (R. 38-39). Pursuant to Integration Rule 11.06 (7), *supra, page* 6, petitioner Curry was called, over his vehement protests, as a witness against himself for the Florida Bar (R. 42):

> MR. HOLCOMB: I call Mr. Howard Curry, the Respondent as a witness for the Florida Bar.

MR. LOUIS: Just for the Record I want to object because I don't believe—we have got a stipulation here and I think the Rules provide without any question of a right that the Florida Bar has a right to call Mr. Curry before it but I still object because I don't think the Rule is constitutional, but I have received nothing but the utmost co-operation from the attorney from the Florida Bar and the Referee but I still want the record to show that I distinctly object to any method, whether approved by the Florida Bar, any Board of Governors or the Supreme Court of Florida which permits and encourages anybody, whether it is any b-o-d-y, whether it be a judicial, semi-judicial or administrative, to prove up a case where a man can suffer a penalty, in this case the loss of his license to practice law, and where they call him and force him to testify.

MR. HOLCOMB: Your Honor, in support of my calling him as a witness, I would only emphasize that the Integration Rule permitting this was adopted by the Supreme Court and not by the Florida Bar. May we have a ruling on calling him as a witness?

THE REFEREE: Proceed.

THEREUPON, HOWARD CURRY, called as a witness by the Complainant, having been previously duly sworn, was examined and testified on his oath as follows:

DIRECT EXAMINATION

BY MR. HOLCOMB:

Q. Mr. Curry, would you state your name and your address?

A. Howard Curry, 220 Miracle Mile, Coral Gables, Florida.****

Pursuant to Integration Rule 11.06(9)(b) Bar counsel, an attorney from petitioner's same judicial circuit recommended that petitioner Curry be found guilty as charged and be given a private reprimand (R.131).

On 30 January 1967, the Referee, also an attorney from petitioner's same judicial circuit, found attorney Curry guilty as charged and likewise recommended a private reprimand (R. 139-145), Paragraphs 3, 4, 5, 6 of the Findings of Fact within the report of the Referee, *inter alia*, stating:

3. That the aforesaid letter did not go to any persons other than to those whom he had previously come into contact with through his practice as a lawyer.

4. The Stipulation entered into between counsel for The Florida Bar and for the respondent recites that the addressees had a lawyer-client relationship with the respondent. Then it recites 'although the Respondent was not necessarily representing such persons as their lawyer at the time said letter was mailed.'

5. There is no evidence that the respondent had reason to believe that he had been supplanted by another lawyer.

6. The testimony emphasizes respondent's lack of intention to actually take legal business away from other lawyers or to profit by the consultations which the letter solicited.

On 1 April 1967 the Board of Governors of the Florida Bar, pursuant to Integration Rule 11.06(9)(c)(ii) entered its judgment adopting the findings of the Referee, but instead of a private reprimand, recommended that petitioner Curry be suspended from the practice of law for 6 months. (R. 147-8).

As the basis for his contention that he has been deprived of equal protection of the law because of the malapportionment of the governing body of the Florida Bar, petitioner relies on the following facts: On 7 June 1949 the Florida Supreme Court integrated the Florida Bar, requiring every lawyer practicing in Florida to belong thereto. *Petition of Fla. State Bar Ass'n.* (Fla. 1949) 40 *So.*2d 902. Thereafter, it also became mandatory that the affairs of the Florida Bar be conducted in accordance with the provisions of the Integration Rule.

Florida is divided into 17 judicial circuits. The governing body of the Florida Bar is its Board of Governors (Article III (1) of the Integration Rule). In 1966[1] of the the Rule provided that said Board shall be composed of three officers and representatives "elected from the active

[1]As amended by the Florida Supreme Court in *In the Matter of the Florida Bar,* (May 1965) 175 So. 2d 530.

members of the Florida Bar in each judicial circuit. The total number shall be twice the number of the total of all the judicial circuits"; to-wit: 2 x 17 = 34. One half of the Circuit representatives were elected from the 17 judicial Circuits on the basis of one representative from each Circuit. The other half of the Board was apportioned in accordance with a complicated mathematical formula (Article III, Section 1 (b), supra, p. 3-4).

The "Certification of Board Positions" published in the Florida Bar Journal, the official publication of the Integrated Florida Bar in January of 1966 (Vol. 40, No. 1, p. 8; A 12) announced that the number of practicing attorneys in Florida as of 15 December 1965 totalled 8,075, with 2,828 of said attorneys practicing in the Eleventh Judicial Circuit (Dade County), the circuit in which petitioner Curry practices and resides. Using the apportionment rule set forth in Section 1 (b) of Article III of the Integration Rule, supra, p. ____, the Eleventh Circuit (Dade County) was entitled to 7 representatives elected by those 2,828 members practicing in said Eleventh Circuit (Article III, Section 2, supra, p. 4).

Prior to May, 1965, the Eleventh Circuit (Dade County) was represented by only three lawyers. In May of 1965 the Supreme Court of Florida *In the Matter of The Florida Bar*, 175 So.2d 530 amended the Integration Rule by reapportioning the Board of Governors and *inter alia* created 4 additional representatives on the Board from the Eleventh Circuit (R. 99, 105). Instead of electing the four new Governors by vote of the active members of the Florida Bar of the Eleventh Circuit, the Board of Governors themselves admitted electing the four additional representatives from the Eleventh Circuit to full

two-year terms (R. 99, 100) (R. 105, 106). Moreover, two of the three members of the Board of Governors previously elected for two-year terms by popular election of the active members of the Eleventh Circuit, resigned and their two vacancies were legitimately filled by electing successors from the Eleventh Circuit to fill the unexpired terms of the Board of Governors in accordance with the Integration Rule (R. 99, 100; R. 105, 106). Therefore, at all times pertinent, the petitioner was not only disciplined by a geographically disproportioned Board of Governors, but of the seven governors from his own Eleventh Circuit, only one representative had been elected by the active members of the Florida Bar practicing in petitioner's same Eleventh Judicial Circuit.

Thus, Eleventh Circuit representatives comprised but 20% of the Board of Governors (as 7 is to 34) although approximately 35% of the active members of the Florida Bar reside and practice in said Eleventh Circuit (as 2,828 is to 8,075).

On 28 April 1967 attorney Curry appealed to the Supreme Court of Florida, raising the Constitutional issues here urged. In the opinion *sub judice*, the Florida Supreme Court affirmed the judgment of the Board of Governors and squarely denied to petitioner any protection by virtue of the United States Constitution (A. 9):

> [2] The third point is: "Where pursuant to reapportionment of Board of Governors of Florida Bar (in the matter of The Florida Bar, Fla., 175 So.2d 530) the Board of Governors appointed additional members to fill said newly created offices, instead of election by the active members

of The Florida Bar, was the enlarged Board of Governors unconstitutional and unlawfully constituted and any action taken thereby void?" We have considered this matter and conclude that the Board was duly and legally constituted and Mr. Curry's contention is without merit on that phase.

[3] The fourth point is: "Is the judgment of suspension entered in this action invalid where said judgment does not reflect whether the procedural steps for review set forth in Rule 11.06 (9) (c) (1) of the Integration Rule of The Florida Bar had been followed?" The record reveals that all steps were taken in this matter. In no way has Mr. Curry been deprived of notice and a hearing, hence this point has no merit.

[4] The fifth point is: "Where pursuant to Rule 11.04 (2) (3) of the Integration Rules, respondent was required to produce records and testify against himself before the Grievance Committee and before the Referee (over his objection) respondent was granted immunity under the Fifth and Fourteenth Amendments to the United States Constitution and Section 12, Declaration of Rights, Florida Constitution against any further disciplinary procedures." In this proceeding we have no statutory immunity where he is called to testify. Mr. Curry relies upon immunity under the Fifth and Fourteenth Amendments to the Constitution of the United States and Section 12 of the Declaration of Rights of the Florida Constitution. At no time during

this proceeding did Mr. Curry refuse to testify or otherwise claim his constitutional rights against self-incrimination.

In addition thereto, in his Petition for Rehearing filed before the Court on or about 4 June 1968, under paragraph 5, the petitioner raised an additional ground now asserted before this Court:

5. The Court overlooked and failed to consider that in insisting that the hearing before this Court proceed without respondent being represented by counsel at the oral argument, even though respondent's counsel and counsel for The Florida Bar, Lyle Holcomb, were not present at said hearing due to circumstances beyond their control and due to an Act of God, respondent was denied due process in violation of Amendments V and XIV to the Constitution of the United States.

Prior to the oral argument, respondent agreed to a continuance of said oral argument in order to accommodate attorney Earl Waldin in his capacity as attorney for the Bar. At the oral argument before this Court attorney Waldin expressly indicated to this Court that the Florida Bar had no objection to continuing said oral argument until the undersigned counsel for respondent had an opportunity to appear and argue on behalf of respondent.

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it is in direct conflict with the decisions of this Court in *Spevack v. Klein*, 385 U.S. 511, 17 L.Ed. 2d 574, 87 S. Ct. 625 and *Garrity v. State of New Jersey*, 385 U.S. 493, 17 L. Ed. 2d 562, 87 So. Ct. 625, or if it is not so in conflict, the issues of far-reaching importance left undecided in those cases must be faced. In either event, this Court should grant review because important and unsettled questions concerning disciplinary procedures and enforcement promulgated by State Courts in disciplining or disbarring lawyers are presently the subject of great public concern.

1. In the summer of 1967, the President of the American Bar appointed Mr. Justice Tom C. Clark, Chairman of a special committee on evaluation of disciplinary enforcement. Along with Justice Clark, the members of the committee were John G. Bonomi, New York, New York; Fred B. Hulse, Sedalia, Missouri; Robert W. Meserve, Boston, Massachusetts, David W. Richmond, Washington, D.C., Edward B. Rood, Tampa, Florida, John A. Sutro, San Francisco, California and David J. A. Hayes, Jr., Chicago, Illinois.

On 25 and 26 May 1968 this committee held its third regional meeting on disciplinary enforcement at the Americana Hotel on Miami Beach. The transcript of said meeting will reflect that the Florida Bar was recognized by the Chairman as having one of the most active disciplinary programs in the United States of America. Undoubtedly, with such a record and with the Honorable Edward B. Rood of Tampa, Florida, as a member of said committee,

the committee will undoubtedly rely heavily on the procedures and experience of the Florida Bar. It is, therefore, of great public interest for this Court to determine whether or not the disciplinary rules of the Florida Bar afford the Constitutional guarantees to members of the Florida Bar who practice both before Florida and Federal tribunals.

2. Both *Spevack v. Klein, supra, p.*— and *Garrity v. State of New Jersey supra p.* __, were cited to the Court below as authority that the Constitution proscribed any rule requiring a lawyer in a disciplinary proceeding to produce records or testify against himself. The Florida Supreme Court avoided passing on the constitutionality of its own Integration Rules* by adjudicating that "at no time during this proceeding did Mr. Curry refuse to testify or otherwise claim his constitutional rights against self-incrimination." (A- __)

With due diffidence, petitioner respectfully submits that he repeatedly preserved his constitutional rights— not only in his Motion to Dismiss (R. 96-97 *supra*, p. 11), but also in the stipulation between the parties (R. 101-103), *supra*, p. 13. Further, at the hearing before the Referee on 7 July 1966, petitioner vociferously objected to being required to testify against himself. (R. 42).

By virtue of the Integration Rule, prior to the publication of the opinion sought to be reviewed, all proceedings were secret. This Court has recognized that the procedures utilized by the petitioner to challenge the validity and the constitutionality of the Integration Rules involved are ac-

*Rule 11.04: *Investigation by Grievance Committee,* (2) *The accused;* (3)*Testimony of witnesses; contempt.* Rule 11.06: *Trial by Referee and Entry of Judgment,* (7) *The respondent.*

ceptable. Petitioner was not required to subject himself to the risk of contempt of court, public scorn and imprisonment to test the validity of the Integration Rules promulgated by the court below.

Petitioner suggests that Integration Rule 11.04 (2) whereby the accused lawyer "may be required to testify .... has no right to be present or to be heard during an investigation .... no right to present other testimony or evidence, and .... no right of confrontation or cross-examination" and Integration Rule 11.06(7), ".... When the respondent attorney is subpoenaed to appear and give testimony or to produce books, papers or documents, and he refuses to appear or to produce such books, papers, or documents, or, having been duly sworn to testify, he refuses to answer any proper question, he may be cited for contempt of this Court" are per se violative of the Constitution of the United States of America. An accused lawyer should be afforded no less right than a soldier under Article 32 of the Code of Military Justice.

3. Petitioner, a lawyer from the eleventh circuit, had an inalienable right to be adjudicated by a geographically determined Board of Governors of the Integrated Bar, that was lawfully constituted and fairly apportioned in accordance with the adjudications of this Court in *Reynolds v. Sims*, 377 U.S. 533, 12 L.Ed. 2d 506, 84 S.Ct. 1362, *Swann v. Adams*, 385 U.S. 440, 17 L.Ed.2d 501, 87 S.Ct. 569 and their progeny.

The unequal and disproportionate composition of the Board of Governors violated petitioner's constitutional right to the equal protection of law. The facts in the case *sub judice* eloquently demonstrate the wisdom and the jus-

tice for the "one man—one vote" rule. Petitioner's trial occurred in the circuit where he practiced and resided—the referee and the prosecutor were both from his circuit. The referee, after observing the witnesses and listening to their testimony, was required *inter alia* by Rule 11.06(9)(a) to make a report including "recommendations as to the disciplinary measures to be applied." Upon finding attorney Curry guilty as charged the referee recommended a private reprimand (R. 139-145). Bar counsel concurred in the findings and recommendations of the referee. Obviously, the referee and Bar counsel, peers of the accused attorney, were thoroughly familiar with the mores, customs, and general practice of lawyers of the eleventh circuit. Therefore, it is not without significance that both the referee and Bar counsel separately concurring recommended that petitioner receive a private reprimand. The Board of Governors, pursuant to Rule 11.06(9)(c), acting as a quasi-judicial appellate tribunal affirmed the finding of its referee but overruled his recommendation and that of its counsel as to penalty, and recommended a six-month's suspension.

It is noteworthy that only one Governor of the thirty-four member Board had been duly elected by lawyers of the eleventh circuit thus receiving the stamp of approval of a majority of his peers—the lawyers of the eleventh circuit. The six other lawyers representing the eleventh circuit had been elected to their office by an already malproportioned Board—not by their peers of the eleventh circuit.

A fortiori, although 35% of the Florida lawyers practiced in the eleventh circuit, eleventh circuit representatives

comprised only approximately 20% of the Board of Governors.

4. Rule 11.06(9)(c)(i) of the Integration Rule of the Florida Bar (*supra* 8) specifically sets forth the prescribed procedure to be followed by the Board of Governors upon receiving a report of its referee.

The Judgment of the Board of Governors (R. 147-149; A. 17-19) abysmally fails to reflect whether the mandatory requirements of Rule 11.06(9)(c)(i) were complied with. The Judgment of the Board of Governors is no more entitled to anonymity on these issues than the judgment of any jury or any other tribunal—judicial or quasi-judicial.

The Judgment is silent in the following respects: i) Whether a five-man reviewing committee read and reviewed the entire record, ii) whether the Committee prepared a written report indicating the concurring and dissenting members as to the guilt of respondent; iii) whether the Committee indicated its recommendations for disciplinary measures; iv) whether four members of the committee concurred as to the guilt of the respondent; v) whether a quorum of the Board was present; vi) whether the Board reviewed the report; vii) how the Board voted.

To the contention that he had been denied due process, the Court stated: "The record reveals all steps were taken in this matter." With all diffidence, petitioner asserts that the record is silent in all respects urged herein. The Court also stated: "In no way has Mr. Curry been deprived of *notice* and a *hearing*, hence this point has no merit." Again with due diffidence, petitioner suggests

that the judgment of the arm of the Supreme Court of Florida, the Board of Governors of the Florida Bar, is no more entitled to anonymity on these issues than the verdict of a lay jury or the opinion of a judge or an appellate tribunal—judicial or quasi-judicial. Certainly if the meanest criminal in the land has the right to demand that jurors be asked severally if the verdict rendered is their verdict, an accused attorney is entitled to know whether the judgment of the Board of Governors is in fact the judgment of each severable member of the Board of Governors who may have participated in the entry of the judgment herein.

We suggest that if this gracious writ of certiorari is granted, this Court will immediately discern that the Record below is silent in all respects complained of. It is even possible that all seven representatives from the eleventh circuit voted to adopt *in toto* the report and recommendations of the referee. Such a fact in itself would be additional proof of the denial of equal protection by a disproportionate Board of Governors:—but, alas, corroboration of that possiblity is forever foreclosed to petitioner.

5. In promulgating disciplinary procedure for lawyers, the courts should encourage open and full disclosure rather than anonymity and star chamber procedures. The questions presented by this petition are of great and recurring significance in the administration of disciplinary enforcement. The important nature of these issues has already been recognized by this Court as recently as *Spevack v. Klein, supra.* The serious questions of public policy involved herein and the effect of the decision below if unreversed upon the historic right of due process of law, equal protection of the law and open procedures as those rights

belong to an attorney, make this case peculiarly appropriate for the exercise of this Court's discretionary jurisdiction.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this Petition for Writ of Certiorari be granted.

Respectfully submitted,

PAUL A. LOUIS
BERTHA CLAIRE LEE
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By _____
PAUL A. LOUIS